

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

DENICE RIVERA, Individually and as
Administrator of the Estate of
RAFAEL RIVERA, Deceased
763 8th Street
Niagara Falls, New York 14301,

SUMMONS

Plaintiff,

v.

Index No.:

CITY OF BUFFALO
Room 1100, City Hall,
Buffalo New York 14202,

CITY OF BUFFALO POLICE DEPARTMENT
74 Franklin Street
Buffalo, New York 14202,

OFFICER ELNUR KARADSHAEV
74 Franklin Street
Buffalo, New York 14202, and

JOHN DOE,
Being a Police Officer of the City of Buffalo
Police Department, whose identity is not yet known,
74 Franklin Street
Buffalo, New York 14202,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer or, if the Complaint is not served with a Summons, to serve a Notice of Appearance, on Plaintiff's attorney within TWENTY (20) days after the service of this Summons, exclusive of the day of service, or within THIRTY (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your

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HOGANWILLIG
Attorneys at Law

failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint, together with the cost of this action.

This action is brought in ERIE COUNTY based upon Defendants' addresses and the location of the accrual of the causes of action herein.

Dated: September 12, 2019
Amherst, New York



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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

DENICE RIVERA, Individually and as
Administrator of the Estate of
RAFAEL RIVERA, Deceased,

Plaintiff,

COMPLAINT

Index No.:

v.

CITY OF BUFFALO,
CITY OF BUFFALO POLICE DEPARTMENT,
OFFICER ELNUR KARADSHAEV, and
JOHN DOE,
Being a Police Officer of the City of Buffalo
Police Department, whose identity is not yet known,

Defendants.

Plaintiff DENICE RIVERA, Individually and as Administrator of the Estate of RAFAEL RIVERA, Deceased ("Plaintiff"), by and through her attorneys, HOGANWILLIG, PLLC, as and for her Complaint against Defendants CITY OF BUFFALO ("CITY OF BUFFALO"), CITY OF BUFFALO POLICE DEPARTMENT ("BPD"), OFFICER ELNUR KARADSHAEV ("OFFICER KARADSHAEV") and JOHN DOE, Being a Police Officer of the City of Buffalo Police Department, whose identity is not yet known ("OFFICER DOE") (collectively Defendant "OFFICERS"), herein alleges as follows:

1. At all times hereinafter mentioned, Plaintiff Denice Rivera was and still is a resident of the County of Niagara and State of New York.
2. Plaintiff's Decedent RAFAEL RIVERA ("Mr. Rivera") was the son of Plaintiff DENICE RIVERA.
3. Plaintiff's Decedent was a man of Hispanic/Latino/Puerto Rican descent.

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4. Mr. Rivera was killed on or about September 12, 2018, after being shot dead by Defendant KARADSHAEV, with the aid, complicity and assistance of all other defendants named herein.

5. Upon information and belief, Defendant KARADSHAEV was given an award and/or medal for killing Plaintiff's Decedent by Defendants CITY OF BUFFALO and BPD.

6. On August 2, 2019, Plaintiff was granted Letters of Administration by the Surrogate's Court of the County of Erie, for the estate of RAFAEL RIVERA. Ms. Rivera continues to act and serve as the Administrator of the Estate of RAFAEL RIVERA. A copy of the Letters of Administration is attached hereto as **Exhibit A**.

7. At all times hereinafter mentioned, Defendant CITY OF BUFFALO was and is a municipal corporation organized and existing under the laws of the State of New York, with principal offices located at Room 1100, City Hall, Buffalo, New York 14202.

8. At all times hereinafter mentioned, Defendant CITY OF BUFFALO operated and maintained a police department known as Defendant BPD, with principal offices located at 74 Franklin Street, Buffalo, New York 14202.¹

9. Upon information and belief, at all times hereinafter mentioned, Defendant OFFICERS were natural persons residing in the County of Erie and State of New York, and were employees of Defendants CITY OF BUFFALO and BPD.

10. Each of the acts of Defendant OFFICERS was/were performed in the course of their employment with Defendants CITY OF BUFFALO and BPD, and under the color and pretense of the laws, statutes, ordinances, regulations, customs, practices and usages of the State of New York, County of Erie, and City of Buffalo, and BPD and pursuant to their authority and within the scope of their employment as police officers.

¹ As of the date of this filing, Defendant BPD has moved its headquarters to 68 Court St., Buffalo, NY 14202.

11. That each of the acts alleged herein of and by Defendant OFFICERS constituted state action.

12. As state action, Defendants are subject to and bound by the authority, proscriptions, rights and limitations as set forth by the Constitutions of the United States of America and the State of New York.

13. All defendants herein, including municipal defendants, are accountable to the Court before which this matter is pleaded, as "persons" pursuant to the holding in *Monell v Department of Social Services*, 436 US 658 (1978), and subject to suit under 42 USC 1983.

14. Alternatively, each of the acts of Defendant OFFICERS was done maliciously, intentionally, wantonly and/or negligently, and performed outside the scope of their respective employment with Defendants CITY OF BUFFALO and BPD, or in excess of their authority pursuant to said employment.

15. Plaintiff sues Defendant OFFICERS, public employees, in both their official and individual capacities.

16. As required by the New York General Municipal Law, a Notice of Claim was properly and duly served upon municipal Defendants CITY OF BUFFALO and BPD on or about November 21, 2018, followed by an Amended Notice of Claim on February 1, 2019. A copy of the Amended Notice of Claim is attached hereto as **Exhibit B**.

17. On or about November 29, 2018, Defendants CITY OF BUFFALO and BPD served upon Plaintiff a Demand for Oral Examination of Plaintiff/Claimant Pursuant to Section 50-h of the General Municipal Law, a copy of which is attached hereto as **Exhibit C**.

18. Defendants CITY OF BUFFALO and BPD conducted an examination of Plaintiff pursuant to Section 50-h of the General Municipal Law on February 7, 2019.

19. More than thirty (30) days have elapsed from the date the Notice of Claim was served and, as of the time of this Complaint, Defendants have made no attempts to settle this claim.

20. This action is commenced within one year and ninety days of the date of the occurrence which resulted in the death of Plaintiff's Decedent.

21. Venue is proper in Erie County based upon Defendants' addresses and the location of the accrual of the causes of action herein.

ALLEGATIONS PERTAINING TO ALL CLAIMS

22. On or about September 12, 2018, at approximately 3:14 a.m., Mr. Rivera, the father of two minor children who he supported, was lawfully on Plymouth Avenue, between Massachusetts Avenue and Rhode Island Street, in the City of Buffalo, County of Erie, State of New York.

23. On or about September 12, 2018 at approximately 3:14 a.m., Defendant OFFICERS confronted Decedent, while they were on duty for Defendants CITY OF BUFFALO and BPD.

24. Mr. Rivera began to run away from Defendant OFFICERS.

25. As he was running away from the Defendant OFFICERS, Plaintiff's Decedent tripped and fell to the ground, started to get up and turned away from a Defendant OFFICER and re-commenced to run away from Defendant OFFICERS.

26. Plaintiff's Decedent got up and continued running away from the Defendant OFFICERS.

27. At approximately 3:14 a.m. on September 12, 2018, Defendant OFFICER KARADSHAEV, with the complicity of all Defendant OFFICERS, fired a total of six (6) shots from his police issued weapon, and shot Mr. Rivera three (3) times in the back and/or side as Mr.

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Rivera was running away from Defendant OFFICER KARADSHAEV, and running away from all police officers, resulting in injury to, and then death of Mr. Rivera.

28. Mr. Rivera leaves behind two minor children, son R. who at the time of the killing was 12 years of age, and daughter J. who at the time of the killing was 8 years of age.

29. That at no relevant time herein did Mr. Rivera point a weapon at Defendant OFFICERS or at any other individual or at any structure or dwelling.

30. At no time relevant herein did Mr. Rivera threaten to point a weapon at Defendant OFFICERS or at any other individual or at any structure or dwelling.

31. At no relevant time herein did Mr. Rivera pose an imminent or immediate threat to anyone at the time he was shot and killed by Defendant OFFICER KARADSHAEV, in complete disregard for the use of force continuums promulgated by professional law enforcement agencies and personnel through the County of Erie, State of New York and United States of America.

32. That Mr. Rivera was placed in handcuffs by Defendant OFFICERS while dying and lying on the ground.

33. The events heretofore set forth, in substantial part, were captured by a security video camera affixed to a nearby building.

34. That at no point did Defendant OFFICERS administer, nor even attempt to administer first aid until minutes had passed, and after an officer shined his flashlight on the security camera.

35. Defendant OFFICER KARADSHAEV is light skinned Caucasian and Plaintiff's Decedent is dark skinned Puerto Rican.

36. Upon information and belief, Plaintiff Decedent's ethnicity was a factor that caused Defendant OFFICERS to unreasonably believe Plaintiff's Decedent was a danger to them, and therefore justified in shooting Plaintiff's Decedent in the back and side while running away, and was a factor that caused Defendant OFFICERS to withhold the administration of any first aid until they realized their actions were being captured by a surveillance camera.

37. At approximately 3:19 a.m., and after approximately five (5) minutes of laying unattended and uncared for by Defendant OFFICERS, emergency medical services arrived on scene.

38. Emergency medical services personnel could not save Mr. Rivera from the gun shots inflicted by Defendant OFFICER KARADSHAEV.

39. Rafael Rivera was deceased by the time emergency medical services left the scene.

40. Defendants claimed that Plaintiff's Decedent was armed and holding a gun at the time he was shot.

41. The day Mr. Rivera was shot and killed, Plaintiff's counsel requested of Defendants an opportunity to:

- view the alleged gun, and to
- learn the specific chain of custody of the alleged gun from the time of its alleged carriage by Mr. Rivera, and to
- have it kept under a non-Defendant Officer police escort to insure integrity and then tested for fingerprints, and to
- have it kept under a non-Defendant Officer police escort to insure integrity and then tested for DNA, and to
- learn the make, model and serial number of the alleged gun

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42. Plaintiff's counsel requested that, if he couldn't have access to the firearm and cause it to be tested for fingerprints and DNA under impartial police escort, Plaintiff's counsel at least wanted to learn the make, model, caliber and serial number of the alleged firearm.

43. Defendants denied Plaintiff's counsel's requests the day of the shooting, and to this present day.

44. It wasn't until the District Attorney's Office requested that specific evidence approximately seven (7) weeks after the incident that a specific firearm was identified.

45. Upon information and belief, Defendants CITY OF BUFFALO and BPD reviewed the facts of the fatal shooting and gave Defendant OFFICER KARADSHAEV an award and commendation for his actions.

46. Upon information and belief, Defendants CITY OF BUFFALO and BPD have a custom and practice of condoning, and/or tolerating racial profiling, such that the killing of a dark skinned man who is not actively pointing a firearm toward anyone, nor threatening anyone with any weapon, is deemed worthy of an award, commendation and/or medal to the officer who pulled the trigger.

47. The ethno/racial bias exhibited by all Defendants has caused injury and death in the past, and in the instant case, and for the good of society, needs to be discouraged by an award of punitive damages herein.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
WRONGFUL DEATH

48. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "47" as if fully set forth herein.

49. On or about September 12, 2018, Defendant OFFICERS negligently, recklessly, wantonly, and/or intentionally shot Plaintiff's Decedent Rafael "Pito" Rivera in the back and/or side multiple times without requisite provocation or lawful justification.

50. On or about September 12, 2018, Defendant OFFICERS withheld the administration of first aid and lifesaving measures from Plaintiff's Decedent.

51. That the aforesaid shooting, injuries, pain, suffering and ultimate death of Mr. Rivera was caused solely by the negligent, careless, reckless, wanton, and otherwise tortious acts of Defendant OFFICERS.

52. That the actions of Defendant OFFICERS were performed in the furtherance of Defendant OFFICERS' employment with Defendants CITY OF BUFFALO and BPD.

53. That by reason of the foregoing, Plaintiff and the estate of Mr. Rivera suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
SURVIVORSHIP and CONSCIOUS PAIN AND SUFFERING**

54. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "53" as if fully set forth herein.

55. From approximately 3:14 a.m. on September 12, 2018 to approximately 3:19 a.m. on September 12, 2018, Mr. Rivera had time to contemplate his death and the fate of his children without him, and endured great pain and mental suffering, suffered intense physical pain and mental shock and anguish, and did suffer conscious pain and suffering, all of which was the result of the tortious acts Defendants.

56. Immediately prior to the shots that ultimately killed Plaintiff's Decedent, Mr. Rivera was being pursued by a police officer who was attempting to shoot and kill him. At least three (3) shots were fired that did not strike Mr. Rivera. As such, Mr. Rivera had a cognitive awareness and pre-impact terror such that he was fearful and aware of his own impending death

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by the gun or guns in the hands of the police officer or officers who were determined to, and did, end Mr. Rivera's life.

57. That by reason of the foregoing, Plaintiffs herein suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS: EMPLOYER
LIABILITY FOR EMPLOYEE ACT**

58. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "57" as if fully set forth herein.

59. Defendants CITY OF BUFFALO and BPD are statutorily and/or contractually liable for the actions of their employees, Defendant OFFICERS, which directly resulted in the death and pain and suffering of Mr. Rivera due to Defendants' tortious conduct.

60. Defendant OFFICERS' negligence, misconduct and/or tortious conduct was done within the scope of their authority and in furtherance of their duties as employees of Defendants CITY OF BUFFALO and BPD.

61. At all times herein, Defendant OFFICERS were and/or should have been under the direct or indirect control of their employers, Defendants CITY OF BUFFALO and BPD.

62. That by reason of the foregoing, Plaintiff's and Mr. Rivera's estate suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts, plus punitive damages.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT HIRING, TRAINING, AND SUPERVISION**

63. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "62" as if fully set forth herein.

64. Defendants CITY OF BUFFALO and BPD, their agents, servants, and employees, hired Defendant OFFICERS to perform work as police officers for Defendants CITY OF BUFFALO and BPD.

65. Upon information and belief, Defendants BUFFALO and BPD, their agents, servants, and employees, hired and trained Defendant OFFICERS to perform work as police officers of Defendants CITY OF BUFFALO and BPD.

66. Defendants CITY OF BUFFALO and BPD were negligent in the hiring of Defendant OFFICERS in that they knew, or in the exercise of reasonable care should have known, that said Defendants did not possess the temperament and psychological makeup to properly carry out their duties as responsible and law abiding police officers.

67. Defendants CITY OF BUFFALO and BPD were negligent in the hiring of Officer KARADSHAEV in failing to competently investigate and screen for his propensity to use deadly physical force when uncalled for and unjustified.

68. Defendants CITY OF BUFFALO and BPD were negligent in the training of Defendant OFFICERS in that they failed to train said Defendant OFFICERS and officer KARADSHAEV in the proper bases for use of force, using deadly physical force, and in the rights of citizens under the United States Constitution and New York State Constitution in general and how to otherwise properly carry out their duties as responsible and law abiding police officers.

69. Defendants CITY OF BUFFALO and BPD were negligent in the supervision of Defendant OFFICERS in that they permitted said Defendants and officer KARADSHAEV to use excessive force in effectuating arrests; and deadly physical force in a situation which called for a different level of force than deadly physical force, and failed to train and supervise officer KARADSHAEV in methodologies in the use of force continuums available to and promulgated

by lawfully abiding law enforcement agencies, departments and personnel, and encouraged an atmosphere of disregard of the rights of citizens under the United States Constitution and New York Constitution; and failed to discipline police officers who committed such offenses.

70. That by reason of the foregoing, Plaintiffs suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts, plus punitive damages.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS:
VIOLATION OF PLAINTIFF'S CIVIL RIGHTS THROUGH EXCESSIVE USE OF
FORCE**

71. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "70" as if fully set forth herein.

72. At the time Mr. Rivera was subjected to afore-pleaded excessive force by Defendant OFFICERS, Plaintiff had made no attempts to interfere with police business, did not pose any threat to Defendant OFFICERS or to others, nor pointed a weapon at any person or structure.

73. The deadly physical force used by Defendant OFFICERS was not warranted or reasonable and was excessive under the circumstances.

74. There was no attempt by any Defendant herein to de-escalate any perceived situation, nor to use any degree of force less than deadly physical force on the person of RAFAEL RIVERA.

75. The aforesaid conduct of Defendant OFFICERS was pursuant to a policy and custom of Defendants CITY OF BUFFALO and BPD.

76. Plaintiff's Decedent had pain inflicted upon him, and was deprived of life and property without justification or due process of law, as a result of the conduct of all Defendants herein.

77. The estate of Plaintiff's Decedent has been deprived of property, to wit, the support provided by Mr. Rivera to his two minor children, without justification or due process of law.

78. That by reason of the foregoing, Plaintiffs suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
VIOLATION OF PLAINTIFF'S CIVIL RIGHTS THROUGH DEPRIVATION OF LIFE
WITHOUT DUE PROCESS OF LAW**

79. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "78" as if fully set forth herein.

80. Defendants CITY OF BUFFALO and BPD, through its agents, servants, and/or employees, Defendant OFFICERS, in failing to supervise, provide adequate medical care, and ensure the safety of Mr. Rivera, intentionally deprived Mr. Rivera of his right to life under the United States Constitution, as applied to the states by the Fourteenth Amendment, without due process of law, and the New York State Constitution, Article I, §§11, 12 and 16.

81. That by reason of the foregoing, Plaintiff's and Mr. Rivera's estate suffered harm and damages in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
PUNITIVE DAMAGES**

82. Plaintiff repeats, reiterates, and realleges each and every allegation in paragraphs "1" through "81" as if fully set forth herein.

83. By virtue of the foregoing, Defendants need to be punished.

84. The wanton, reckless, malicious and unconstitutional acts by all Defendants herein warrants, merits and demands an imposition of punitive damages to protect society against similar acts.

85. Notwithstanding countless incidents of similar conduct by Defendants, the conduct continues, unabated, as the consequences to individual officers is ameliorated by the coverage and satisfaction of jury verdicts and awards by Defendants CITY OF BUFFALO and BPD, and awards of compensatory damages alone have been insufficient thus far to cause Defendants CITY OF BUFFALO and BPD to be motivated to take the necessary steps to put an end to such tortious and unconstitutional conduct by their officers.

WHEREFORE, Plaintiff demands judgment against Defendants on its causes of action as set forth below:

- a) On the first cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- b) On the second cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- c) On the third cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- d) On the fourth cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- e) On the fifth cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- f) On the sixth cause of action in an amount that exceeds the jurisdictional limits of all lower courts;
- g) On the seventh cause of action in an amount that exceeds the jurisdictional limits of all lower courts; and

- h) Costs and disbursements of this action, plus attorney's fees pursuant to 42 USC § 1988 (b); and
- i) Such other and further relief as this Court deems just and proper to Plaintiff.

Dated: September 12, 2019
Amherst, New York



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